IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/09/2004

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THE HONOURABLE MR.JUSTICE P.K.MISRA

and

THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

H.C.P.NO.666 OF 2004

Chinnadurai ..Petitioner

-vs-

1.State of Tamil Nadu, rep. by
The Secretary to Government
Department of Excise and Prohibition
Secretariat
Fort St. George
Chennai 600 009

2.The District Collector
and District Magistrate
Cuddalore District
Cuddalore

3.The Inspector of Police
Prohibition Enforcement Wing
Vridhachalam
Cuddalore District ..Respondents

Petition under Article 226 of the Constitution of India for the issue of writ of Habeas Corpus calling for the records of the second respondent and set aside the order of detention passed in No.C1/27842/200 4 dated 23.04.2004 and direct the respondents to produce the detenue Tmt.Sundaram, wife of Ayyasamy, before this Hon'ble Court now confined in the Special Prison for Women at Vellore as a `Bootlegger' and set her at liberty.

!For petitioner : Mr.T.Madasamy

^For respondents : Mr.Abudu Kumar Rajarathinam
Govt. Advocate(Crl.side)

:ORDER

(Order of the Court was made by P.K.MISRA,J.)

Heard Mr.T.Madasamy, learned counsel for the petitioner and Mr. Abudu Kumar Rajarathinam, Government Advocate, (Criminal side).

2.The order of preventive detention dated 23.4.2004 is challenged in this Habeas Corpus Petition filed by the son of the detenue. The order of detention is on the allegation that the detenue is a bootlegger. Even though several contentions have been raised it is unnecessary to deal with all those contentions as in our opinion the nonplacing of the representation dated 21.4.2004 made by the daughter of the detenue and addressed to the District Magistrate and District Collector for consideration before the Advisory Board has vitiated the order of detention. The materials on record indicate that the representation was sent by registered post acknowledgement due on 21.4.2004 and the order of the detention order was made on 23.4.2004. There is some doubt as to whether such pre-detention representation had been received by the detaining authority before the order of detention was made. However, undoubtedly, such representation was not subsequently forwarded by the detaining authority to the Advisory Board. Even if the representation had not been received before the order of detention has been passed, the detaining authority should have atleast forwarded the representation to the Advisory Board for consideration by such Board. The materials on record indicate that such representation had not been forwarded. In such view of the matter, we are of the opinion that the detention of the detenue becomes vitiated.

3.Accordingly, the Habeas Corpus Petition is allowed and the order of detention is set aside. The detenue is directed to be set at liberty forthwith from the custody unless her custody is required in any other cause or cause.

Index :yes
Internet:yes
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To

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